

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LYNETTE MCDANIELS,

Plaintiff,

v.

JANEL ESPINOZA,

Defendant.

Case No. 18-cv-03495 NC

**ORDER OF SERVICE**

Re: Dkt. No. 1

Petitioner Lynette McDaniels, a state prisoner incarcerated at the Central California Women's Facility, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**I. BACKGROUND**

McDaniels was convicted by a jury of 6 second degree robberies and 3 counts of personal use of firearm enhancements in Santa Clara County Superior Court. Dkt. No. 1 at 3. On August 25, 2014, she was sentenced to 27 years in state prison. *Id.* at 2. McDaniels unsuccessfully appealed her conviction to the California Court of Appeal. Dkt. No. 1 at 4. Then, McDaniels filed a petition for writ of habeas corpus in Santa Clara County Superior Court allegedly raising the same claims raised here. *Id.* at 5. After the superior court denied her petition, she filed a petition with the California Court of Appeal where it was also denied. *Id.* Finally, the Supreme Court of California denied review of her petition on June 14, 2017. *Id.* McDaniels is represented by counsel and she has consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). Dkt. No. 7.

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## II. LEGAL STANDARD

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that [she] is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It must “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990).

## III. DISCUSSION

McDaniels seeks federal habeas corpus relief by claiming that she received ineffective assistance of counsel because her attorney failed to press for a ruling on the admissibility of exculpatory DNA evidence. Dkt. No. 1 at 10. According to McDaniels, the DNA evidence collected at the scene identified a “male Hispanic suspect from an unrelated criminal case” rather than McDaniels. *Id.* She argues that had the DNA evidence been admitted, there is a reasonable probability that she would not have been convicted. *Id.* at 17.

A claim of ineffective assistance of counsel requires: (1) that the attorney’s errors were so deficient that the petitioner was effectively denied the assistance of counsel and (2) that the errors were prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The Court proceeds to consider each element in turn.

### A. Deficiency of Counsel

First, McDaniels argues that her counsel’s error was so deficient that she was denied the assistance of counsel. Dkt. No. 1 at 3. An attorney’s errors are “so deficient” when they are objectively unreasonable based on prevailing professional norms. *Wiggins v. Smith*, 539 U.S. 510, 521 (2003). However, there is a “strong presumption” that the counsel’s representation was within the range of reasonable professional assistance.

1 *Harrington v. Richter*, 562 U.S. 86, 104 (2011). A petitioner “must overcome the  
2 presumption that, under the circumstances, the challenged action might be considered  
3 sound trial strategy.” *Strickland*, 466 U.S. at 689.

4 Specifically, McDaniels argues that her trial counsel failed to press the court for a  
5 final ruling on the admissibility of “exculpatory DNA evidence.” Dkt. No. 1 at 10.  
6 Furthermore, she alleges that her counsel conceded that the failure had “no tactical  
7 justification.” *Id.* at 23. Assuming McDaniel’s allegations are true, the Court does not  
8 find any clear tactical justification for counsel’s failure to press the trial court for a ruling  
9 on admissibility such that McDaniels’s petition is “palpably incredible” or “frivolous.”  
10 Furthermore, absent justification and given the weight generally afforded to DNA  
11 evidence, the failure appears to be unreasonable. *See Williams v. Illinois*, 567 U.S. 50, 58  
12 (2012) (“The use of DNA evidence to exonerate persons who have been wrongfully  
13 accused or convicted is well known.”). Therefore, McDaniels’s argument as to deficiency  
14 of counsel is sufficient under 28 U.S.C. § 2243. *See Hendricks*, 908 F.2d at 491.

### 15 **B. Prejudicial Error**

16 Next, McDaniels argues that counsel’s error was prejudicial. Dkt. No. 1 at 18.  
17 Errors are “prejudicial” when there is a “reasonable probability” that the result of the  
18 proceeding would have been different. *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011).

19 In particular, McDaniels argues that: (1) the DNA evidence was not ruled  
20 inadmissible by the trial court, and (2) if the DNA evidence had been admitted there was a  
21 “reasonable probability” that she would not have been convicted. Dkt. No. 1 at 18.

22 First, McDaniels alleges that in its order denying the petition for a writ of habeas  
23 corpus, the state trial court found that if McDaniel’s counsel had pressed for a final ruling  
24 on the admissibility of the DNA evidence, the trial court would have found it inadmissible;  
25 thus, the trial court found that counsel’s error was not prejudicial. *Id.* at 25. McDaniels  
26 argues that the trial court improperly based its finding on a hypothetical ruling. *Id.* The  
27 Court agrees that the trial court’s allegedly hypothetical ruling does not render  
28 McDaniels’s petition frivolous.

1 Second, McDaniels argues that the DNA evidence collected at the scene identified a  
2 third-party, and that it had a reasonable probability of altering the jury's finding of guilt.  
3 Dkt. No. 1 at 18. The Court notes again that DNA evidence is a particularly strong form of  
4 evidence and thus, finds that McDaniels's claim of prejudice is sufficient under 28 U.S.C.  
5 § 2243. *See Hendricks*, 908 F.2d at 491; *Williams*, 567 U.S. at 58 (strength of DNA  
6 evidence).

7 Therefore, the Court finds that McDaniels's petition sufficiently establishes a  
8 colorable claim for habeas relief on the basis of ineffective assistance of counsel under  
9 *Strickland* such that a response from the government is required.

#### 10 **IV. CONCLUSION**

11 For the foregoing reasons and for good cause shown:

- 12 1. The clerk must serve by certified mail a copy of this order and the  
13 petition and all attachments thereto upon respondent. The clerk must also  
14 serve a copy of this order on petitioner.
- 15 2. Respondent must file with the Court and serve on petitioner, within 60  
16 days of the date of this order, an answer showing why a writ of habeas  
17 corpus should not be issued. Respondent must file the answer and serve  
18 on petitioner a copy of all portions of the administrative record that are  
19 relevant to a determination of the issues presented by the petition.
- 20 3. If the petitioner wishes to respond to the answer, he must do so by filing a  
21 traverse with the court and serving it on respondent within 30 days of his  
22 receipt of the answer.

23  
24 **IT IS SO ORDERED.**

25  
26 Dated: August 7, 2018

27   
28 NATHANAEL M. COUSINS  
United States Magistrate Judge